

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

Before

Shri Rajpal Yadav, Vice President

&

Dr. Manish Borad, Accountant Member

I.T.A. No.1087/KOL/2023

Assessment Year: 2013-14

DCIT, Circle- 11(1), Kolkata

.....

**Appellant**

Vs.

**Welkin Telecom Infra Pvt. Ltd.**  
**76/1, Golaghata Road, Golaghata,**  
**Kolkata-700048.**  
**(PAN: AAJCS6622G)**

.....

**Respondent**

**Appearances by:**

*Shri Subhendu Datta, CIT, Sr. DR appeared for Appellant*

*Shri S. K. Tulsian, Advocate & Ms. Puja Somani, CA appeared for Respondent.*

Date of concluding the hearing : 10.09.2024

Date of pronouncing the order : 10.10.2024

**ORDER**

**Per Dr. Manish Borad, Accountant Member:**

The appeal filed at the instance of the revenue pertaining to the Assessment Year (in short "AY") 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the "Act") by Ld. Commissioner of Income-tax, (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. "CIT(A)"] dated 14.03.2023 arising out of the assessment order framed u/s. 143(3) of the Act by DCIT, Circle11(1), Kolkata dated 30.09.2016.

2. Grounds of appeal raised by the revenue read as under:

*"1) That the CIT(A) erred in not giving any cognizance to the fact that in this case, Special Audit by independent auditor as per provisions of section 142(2A) of the I. T. Act, 1961.*

*2) That on the facts and circumstances of the case, the CIT(A) erred in not giving any cognizance to the fact that the assessee failed to explain the negative cash balance in the regular cash book of the assessee before the*

*Assessing Officer as well as the Special Auditors appointed u/s. 142(2A) of the Act.*

*3) That the CIT(A) erred in deleting the addition of Rs. 1,22,38,787/- made under the head unexplained negative cash balance.*

*4) That on the facts and circumstances of the case, the CIT(A) erred in not giving any cognizance to the fact that the assessee failed to explain the genuineness of the disputed expenses under the head Caretaker Expenses of Rs. 1,48,13,420/- allegedly for protection of telecom towers and cash expenses of Rs. 82,38,1271- towards maintenance and services thereof before the Assessing Officer as well as the Special Auditors.*

*5) That on the facts and circumstances of the case, the CIT(A) erred in deleting the expenses under the head Caretaker Expenses of Rs.1,48,13,420/- allegedly for protection of telecom towers and cash expenses of Rs. 82,38,127/- towards maintenance and services.*

*6. That on the facts and circumstances of the case, the CIT(A) erred in deleting the addition of Rs.1,06,12,994/- under the head Site Expenses incurred in cash ignoring the fact that the assessee failed to satisfactorily explain the expenses before the Assessing Officer as well as the independent Auditors with corroborative supporting documents.*

*7) That on the facts and circumstances of the case, the CIT(A) erred in deleting the addition of RS.23,53,742/- made u/s. 40A(3) accepting the assessee's submission without any cogent reason ignoring the fact that the assessee failed to satisfactorily explain the expenses before the Assessing Officer as well as the independent Auditors with corroborative supporting documents.*

*8) That on the facts and circumstances of the case, the CIT(A) erred in deleting the addition of Rs.16,88,075/- ignoring the fact that interest payment for delayed payment of direct taxes is not an allowable expense as per settled position of law.*

*9) That on the facts and circumstances of the case, the CIT(A) erred in deleting the addition of Rs.2,24,269/- treating the expenditure as Capital Expenditure without proper appreciation of the enduring nature of benefit derived against such expenses.*

*10) That on the facts and circumstances of the case, the CIT(A) erred in deleting the addition on account of alleged loss on "Fuel-Vodafone" account to the tune of Rs.27,18,476/- ignoring the fact that the assessee has failed to substantiate the claim before the Special Auditor as well as the Assessing Officer.*

*11. That on the facts and circumstances of the case, the CIT(A) erred in deleting the addition on account of Night Patrolling Expenses of Rs.34.63.042/-. The CIT(A) has deleted the addition ignoring the fact that no tenable documentary evidence as well as the discrepancies noted in the assessment order.*

*12) That on the facts of the case. the CIT(A) erred in deleting the addition of Rs. 10,66,742/- being employees' contribution to PF and ESI u/s. 36(1)(va) of the Act*

*ignoring the decision of the Hon'ble Apex Court in the case of CHECKMATE SERVICES P. LTD. -VS- COMMISSIONER OF INCOME TAX in CIVIL APPEAL NO. 2833 OF 2016 dated 12/10/2022.*

*13) That on the facts of the case, the CIT(A) erred in deleting the addition of rent amounting to Rs.5.27.500/- u/s. 40(a)(ia) of the Act ignoring the fact that the genuineness of the parties remained unestablished as the postal authorities could not trace out such parties at the given address to serve the notices issued u/s. 133(6) of the Act.*

*14) That on the facts and circumstances of the case, the CIT(A) erred in deleting the addition on account of maintenance charges (of Diesel Generator) of Rs. 80,749/-, The CIT(A) has deleted the addition ignoring the fact the case and findings of the AO.*

*15) That the appellant craves leave to add any new ground or alter any of the grounds of appeal and to place arguments during the course of hearing of the appellate proceedings.”*

3. Brief facts of the case are that the assessee is a private Limited company, engaged in the business of providing support services to telecom operators in the field of operation and maintenance/surveillance management services for towers and tower sites, providing telecom equipment implementation and roll out projects services to telecom original equipment manufacturers. The assessee e-filed its return of income for AY 2013-14 on 29.09.2013 declaring income of Rs.4,98,34,160/-. Case selected for scrutiny through CASS followed by validly serving notices u/s. 143(2) and 142(1) of the Act. Considering the complex nature of account, a proposal was sent to Pr. CIT-4, Kolkata for carrying out special audit u/s. 142(2A) of the Act. The same was accepted and approval granted nominating Special Auditor Shri Rajib Mahajan (R. Mahajan & Co., Kolkata). The copy of special audit report was given to the assessee for necessary explanation to reply and the same was duly complied barring little time given to do the needful. Director was also issued summon u/s. 131 of the Act and the statements were recorded. According to Ld. AO, Director of assessee company failed to furnish plausible explanation with the queries raised. After giving show cause notice to the assessee and getting reply to the same Ld.

AO concluded the assessment proceedings making various additions amounting to Rs.6,33,40,903/- comprised of the following :

	Total Income as per return filed on 29.09.2013		4,98,34,160/-
	<b><u>Addition/Disallowances as discussed above</u></b>		
i	Addition u/s 69C on account of negative cash balance (As discussed in paras 7 to 7.12)	1,22,38,392/-	
ii	Disallowances of Caretaker Services (As discussed in paras 8 to 8.4)	1,48,13,420/-	
iii	Disallowance of Site Expenses (As discussed in paras 9 to 9.4)	1,08,12,994/-	
iv	Disallowance u/s 69C on account of unexplained cash payment with no evidence.	82,38,127/-	

	(As discussed in paras 10 to 10.13)		
v	Disallowance u/s 40A(3)/40A(3a) (As discussed in paras 11 to 11.14)	23,53,742/-	
vi	Disallowance u/s 40A(2) (As discussed in paras 12 to 12.10)	25,70,639/-	
vii	Disallowance of Prior Period Expenses (As discussed in paras 13 to 13.7)	21,54,833/-	
viii	Disallowance of Subscription & Donation (As discussed in paras 14 to 14.5)	1,20,443/-	†
ix	Disallowance u/s 37 on account of Income Tax Payment (As discussed in paras 15 to 15.5)	4,69,460/-	
x	Disallowance of Interest paid for delay payment & Late Fees (As discussed in paras 16 to 16.10)	16,88,075/-	
xi	Disallowance u/s 37 on account of capital expenditure (As discussed in paras 17 to 17.6)	2,24,269/-	
xii	Disallowance of Loss on account of fuel-Vodafone (As discussed in paras 18 to 18.11)	27,18,476/-	
xiii	Disallowance on account Night Patrolling Expenses (As discussed in paras 19 to 19.4)	34,63,042/-	
xiv	Disallowance of Employees' contribution to PF/ESI (As discussed in paras 20 to 20.9)	10,66,742/-	
xv	Disallowance out of rent (As discussed in paras 21 to 21.3)	5,27,500/-	
xvi	Disallowance on account of DG Maintenance (As discussed in paras 22 to 20.10)	80,749/-	<b>6,33,40,903</b>
	<b>TOTAL INCOME</b>		<b>11,31,75,063/-</b>

4. Aggrieved, assessee preferred appeal before the Ld. CIT(A) challenging various additions made by AO and also furnished certain additional evidence in order to explain that the alleged additions were uncalled for. Remand report was called by the Ld. CIT(A) and the same was received from Ld. AO vide letter dated 02.07.2018. During the course of assessment proceeding, the assessee made necessary submission and considering the same the remand report was finalised and was sent to the Ld. CIT(A). Thereafter, Ld. CIT(A) considering the documents submitted by the assessee along with the written submission and the observation of the AO in the remand proceedings and further taking note of the facts of the case, decided in favour of the assessee deleting the impugned addition and the finding of the Ld. CIT(A) is at page 80 to 90 of the impugned order at para 6. Aggrieved, revenue is now in appeal before this Tribunal.

5. Ld. DR vehemently argued supporting the order of the Ld. AO and urged before us to reverse the order of the Ld. CIT(A) and restore the action of the Ld. AO.

6. On the other hand, Ld. Counsel for the assessee took us through the paper book running into 517 pages containing details of the expenses, sample copies of the vouchers, maintenance agreement between assessee and Vodafone Spectacles Ltd., copy of bills of Maa Tara Telecom, Shroff Chemicals Pvt. Ltd. etc. and the same can be summarized with the help of the copy of Index of paper book which is reproduced as under:

Sr No.	Particulars	Page No
1	Copy of the Annual Accounts for the year	1-23
2	Summary of the Cash Flow statement and date wise details of cash withdrawals from Bank as submitted to the AO	24-49
3	Bank Statements for February 2013 and March 2013	50-58
4	Summary of Caretaker Services	59
5	Letter from the Income tax Officer in favour of Y Mughavi Sema and copy of Trade License	60-62a
6	Ledger of Caretaker Expenses and confirmation from parties	63-69
7	Copy of vouchers of caretaker expenses	70-94
8	Ledger Copy of the parties providing Caretaker Services and their confirmation.	95- 115
9	Copy of the agreement between the assessee company and Meda Infrastructure	116-158
10	Copy of the Ledger of Site Expenses	159-217
11	Copy of Appointment letters of Trainees	217a-229
12	Addresses of a few sites in Midnapore (West) and Murshidabad	230-237
13	Sample Copy of the missing vouchers	238-345
14	Details of expenses disallowable u/s 40A(3)	345
15	Bill of Rawalwasiya Industries Pvt Ltd, ledger of Rawalwasiya Industries, copy of the agency agreement	346-347`
16	Copy of the maintenance agreement between the assessee and Vodafone Spacetel Limited	348-375
17	The detailed break up of 625646.43 litres purchased from different petrol pumps along with supporting vouchers	376-415
18	Sample copies of the vouchers for Night patrolling duty payment	416-425
19	Bills of Maa Tara Telecom	425a-425h
20	Bills of Shroff Chemical Pvt Ltd and supporting bank statements	426-432
21	Reworked Cash Flow Statement along with supporting vouchers	433-517

7. Ld. Counsel for the assessee also referred to the written submissions as well as the detailed chart about the comment of the Special Auditor, comments of the AO, submissions made during the course of appellate proceeding and the finding of the Ld. CIT(A) for each grounds of appeal. Ld. Counsel for the assessee also referred to the decision of this Tribunal in assessee's own case for AY 2014-15 in ITA No. 12/Kol/2021 dated 18.04.2022 wherein also some of the disallowance of similar nature were made but relief was granted to the assessee by this Tribunal.

8. We have heard rival contentions and perused the material placed before us. Revenue has challenged the finding of Ld. CIT(A) deleting various additions/disallowances which were made by the AO based on the report of the Special Auditor u/s. 142(2A) of the Act. Before proceeding to deal with each of the ground, we find it necessary to go through the finding the Ld. CIT(A) holding the impugned addition which reads as under:

*“6. Decision of CIT(A)*

*6.1 I have gone through the submission of the appellant and the assessment order. The learned Assessing Officer has carried out multiple adjustments based on finding in audit report submitted by third party CA firm which was appointed U/s 142(2A). Upon reading the assessment order it is observed that he learned Assessing Officer has carried out adjustments merely relying on report of special auditor and he has not applied mind on correctness of findings of auditor vis-à-vis submissions of the appellant.*

*6.2 The appellant filed detailed response which was also filed before learned Assessing Officer and having regard to the same, the grounds wise adjudication of appeal is as under:*

*Ground 1*

*6.3 The ground 1 is general in nature and does not require specific adjudication.*

*Ground 2 and 3*

*6.4 The appellant raised objection on refereeing his books of account for special audit. I have gone through the order of learned Assessing Officer wherein he has given detailed and specific reasons i.e. complicated cash transaction undertaken by the appellant , voluminous and multi locational business activity, etc. therefore by seeking prior approval of Pr. CIT, the learned Assessing Officer called for special audit.*

*6.5 In view of the above, I am of the considerate view that the learned Assessing Officer has provided sufficient reasoning for calling special Audit u/s 142(2A).*

*6.6 Accordingly, the ground 2 and 3 of the appellant are dismissed.*

*Ground 4*

*6.7 The learned AO and special auditor observed that the cash book of the appellant shoed negative cash balance at many instances and he contested that the cash is spent out of unexplained sources and thereby he added total negative cash U/s 69A of the IT Act.*

*6.8 The appellant had provided explanation for the same in its submission and stated that the modus operandi adopted by the appellant i.e. timing difference between recording expenses in books of accounts and making payment by withdrawing cash from bank has led to such negative cash balances and there is no undisclosed source of income out of which expenses are incurred.*

*6.9 The appellant also provided rectified cash book by factoring such timing difference. The appellant also submitted the supporting cash vouchers duly signed by the parties to transactions. The learned Assessing Officer has not provided reason for not accepting the same.*

*6.10 In view of the explanation provided by the appellant and having regard to supporting documents filed, I am of the considerate view the rectified cash book meets the requirement of learned Assessing Officer and the same shall be accepted.*

*6.11 Therefore, the addition made by the learned Assessing Officer for sum of Rs.1,22,38,787/- is deleted.*

*6.12 Accordingly, the ground 4 of the appellant are allowed.*

*Ground 5 and 7:*

*6.13 Ground 5 and 7:*

*6.13 The learned Assessing Officer disallowed caretaker expenses paid for sum of Rs.1,48,13,420/- under the impression that the appellant has not offered source of such expenses and therefore are not genuine and unexplained by the appellant. He also disallowed cash expenses of Rs.82,38,127/- for want of supporting documents. Whereas, the appellant had filed detailed submission wherein it had*

filed chart depicting details of parties to whom payment is made and TDS was also withheld while making payment.

6.14 The appellant has multiple sites of work and the same is acknowledged by the learned Assessing Officer as well. The appellant filed supporting documents such as bills, bank statement depicting payment made to service providers. The underlined expenses are very well business expenses in nature. The appellant also filed copy of agreement with service provider and narrative of scope of work was also filed.

6.15 The learned Assessing Officer has not paid regards to such documentary evidences filed by the appellant.

6.16 Having regards to the supporting documents filed by the appellant, I am of the considerate view that bank statement reflects sufficient funds for making payment to parties and the same satisfies requirement of learned Assessing Officer and other documents such as invoices, agreement, etc. also support genuineness of the transaction. Therefore, the addition made by the learned Assessing Officer for sum of Rs.1,48,13,420/- (ground 5) and sum of Rs.82,38,127/- (ground 7) is deleted.

6.17 Accordingly, the ground 5 and 7 of the appellant are allowed.

Ground 6:

6.18 The learned Assessing Officer disallowed site expenses of Rs.1,06,12,994/- since they were paid in cash and the learned Assessing Officer took such stand based on finding of special auditor.

6.19 The appellant is providing support services to various telecom sites wherein scope of work comprises of identification and acquisition of site, soil testing, civil foundation, opting Govt. clearances, tower erection, etc. It had more than 3000 sites during the year under consideration. To undertake this massive work, the appellant had appointed many trainees to whom stipend was paid. The appellant filed appointment letters and ledger extract depicting payment made in cash.

6.20 On perusal of ledger extract, it is observed that all the payments are made from cash withdrawal from bank only and the location wherein such expenses are at the outskirts of the city where banking facilities are not present. This justifies the reason for making payment in cash and the supporting documents very well explain nature and source of expenses. Therefore, invoking section 69C merely on finding of special auditor is not justified here.

6.21 Accordingly, the addition made by the learned Assessing Officer is deleted and ground 6 of the appeal is allowed.

Ground 8:

6.22 The learned Assessing Officer based on finding of special auditor upheld that the appellant has incurred cash expenses more than 20,000/- in one day and disallowed the same u/s 40A(3).

6.23 The appellant submitted that said entries were journal entries not the payment entries and it submitted the relevant extract from its books of accounts.

6.24 On verification of the same, it is observed that the appellant has not made any payment exceeding 20,000/- in cash to any party and the learned Assessing Officer has not verified the records. Learned Assessing Officer merely followed finding of special auditor without applying his mind, therefore the addition carried is not justified at all.

6.25 Accordingly the addition made by the learned Assessing Officer for sum of Rs.23,53,742/- is deleted.

6.26 Accordingly, the ground 8 of the appellant are allowed.

Ground 9:

6.27 The appellant paid brokerage of Rs.25,70,639/- @ 5% to M/s Rawalwasia Industries Pvt Ltd. The Learned Assessing Officer contested that the said party is related party u/s 40A(2)(b) and the payment made is excessive. Thus, he disallowed the entire amount paid to Rawalwasia.

6.28 In the submission the appellant has demonstrated that Rawalwasia is holding only 12.5% share and as per requirement of section 40A(2)(b) the beneficial ownership shall be established only if the shareholding exceeds 20%. Therefore, it is very clear that M/s Rawalwasia is not a related party and therefore provision of section 40A(2)(b) are not applicable only.

6.29 Therefore, the addition made by the learned AO for sum of RS.25,70,639/- is not correct and is deleted.

6.30 Accordingly, the ground 9 of the appellant are allowed.

Ground 10

6.31 Ground 10 relates to disallowances of interest paid on delayed payments of statutory dues. The learned Assessing Officer has contended that interest paid is penal in nature and should be disallowed.

6.32 The following judicial proceedings can be referred to in light of the subject matter

A. The Apex court in the case of Lachandas Mathura Vs. CIT reported in 254 ITR 799 held that, "The High Court has proceeded on the basis that the interest on arrears of sales tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Bench decision in Saraya Sugar Mills P. Ltd. v. CIT (1979) 116 1TR 387 (All). Learned counsel appearing for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in Triveni Engineering Works Ltd v. CIT [1983] 144 ITR 732 (A11), wherein it has been held that interest on arrears of tax is compensatory in nature and not penal. This question has also been considered by this court in Civil Appeal No. 830 of 1979 titled Saraya Sugar Mills Pvt. Ltd v. CIT, decided on February 29, 1996. In that view of the matter, the appeal is allowed and questions Nos. 1 and 2 are answered in favour of the assessee and against the Revenue. No order as to costs."

B. Hon'ble High Court of Jammu & Kashmir in the case of Commissioner of Income Tax, Amritsar vs. MIs New Alpine Forests, Srinagar reported in [2000] 245 1TR 470 (J&K) has observed that Interest', as understood in the commercial world, is the return or compensation for the retention by one person of a sum of money belonging to or owed to another. The essence of interest is that it is a payment that becomes due because the creditor, hcg, ad his money at the due date. 11 may be regarded either as represent\*, the profit the rightful owner might have made if he had the use of the money, or conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation. It is this compensation which is allowable as a deduction under section 37(1) of the Income Tax Act, 1961.

C. The issue of delay in the payment of service tax is directly covered by the judgment of Hon'ble Apex Court in the case of Lachmandas Mathura Vs. CIT reported in 254 ITR 799 in favour of assessee. The relevant extract of the judgment is reproduced below : "The High Court has proceeded on the basis that the interest on arrears of sales tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Benches decision in Saraya Sugar Mills (P.) Ltd v. CIT [19791 1)6 ITR 387 (All.) The learned counsel appearing ,for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in TriveniEngg. Works Ltd. v. CIT [19831 144 1TR 732 (All.) (FB), wherein it has been held that interest on arrears of tax is compensatory in naiw-e and not penal. This question has also been considered by this Court in Civil Appeal No. 830 of 1979 titled Saraya Sugar Mills (P.) Ltd. v. CIT decided on 29-2-1996. In that view of the matter, the appeal is allowed and question Nos. 1 and 2 are answered in favour of the assessee and against the revenue."

6.33 In view of the above judgment, there remains no doubt that the interest expense on the delayed payment is allowable deduction. Hence, the disallowances made by the learned AO is deleted.

6.34 Accordingly, ground 10 of the appellant is allowed.

Ground 11

6.35 Ground 11 pertains to disallowance of business expenditure on repairs and maintenance by the learned Assessing Officer.

6.36 The repairs and maintenance are incurred on replacement of parts of commercial vehicles like tyres and rim of the wheel etc.

6.37 The learned Assessing Officer has made the contention that wheel rim made of iron provides enduring benefit and hence should be capitalised.

6.38 The appellant has claimed that the tyres and rim are required for the smooth functioning of the vehicles and that they have to be replaced in shorter span of time.

6.39 Hence, it can be seen that such repairs and and maintenance come under the nature of revenue expenditure due to the nature of such assets, which will have to be replaced in a short period of time.

6.40 Reliance can be placed on the following case law

*DCIT vs Banco Products Pvt Ltd (ITA No.1105/ Ahd/201 0) wherein it was held that,*

*"3 1 have considered the submissions of the Id AR and the facts of the case. In various cases the Supreme Court and other High Courts have held that replacement of parts of a larger machine would not amount to creation of any new asset or incurring of capital expenditure. Where the manufacturing activity is carried on by machines comprising of various parts, and where one or more of the part is replaced, it would not amount to replacement of the whole.*

*This proposition has been reiterated by the Supreme Court in the case of Saravana Spinning Mills, in the context of a part called "auto leveler" firming part of a carding machine, in the following terms,-*

*'Similarly, in the carding department we have carding machines with autolevelers. If the maoleveler fails, the carding machine becomes nonfunctional. If an autoleveler is to be repaired then that repair would come within the connotation of the word "current repairs" because it is a part of the carding machine. Even if in a given case, replacement of an autoleveler could come within the connotation of the word "current repairs" if the old part is not available in the market. It is a "current repairs" V the old part is not available in the market It is a "current repairs" V the old part is not available in the market. It is a "current repair" because the carding machine remains an asset without any change even after repair or replacement of the autoleveler. To give an example, a compressor is an important part of an Air-Condition Machine. Repair of the compressor will come in the connotation of the word "current repairs" in section 31 fi) of the said Act because the assessee does not replace the Air-Condition Machine. At the highest, he replaces a part of the air-condition machine. So is the case of the picture tube in a television set, when the picture tube is replaced the television set is not replaced, therefore, such repairs alone can come within the connotation of the word "current repairs" in section 31(0 of the said Act as it stood at the material time. They are effected to preserve and maintain the asset, viz, airconditioner or carding machine,"*

6.41 Hence, I am of the considerate view that the repairs and maintenance were effected to preserve and maintain the asset to their current capacity i.e the tyres and rims of the wheel are required to keep the vehicles running in efficient manner and hence are revenue expenditure to be debited to Profit and Loss account. Hence the addition made by the learned Assessing Officer has been deleted.

6.42 Accordingly, ground 11 raised by the appellant is allowed.

Ground 12

6.43 Ground 12 relates to disallowance of expense on account of loss on fuel Vodafone. The Learned has disallowed such expenses with the contention that the amount was penal in nature and punitive in spirit.

6.44 The appellant has made his submission and has mentioned that the contract with Vodafone Essar space Ltd, the diesel purchased by the assessee was reimbursed by the Vodafone Essar Space Ltd on presentation of Bill. However, when the actual bills were presented for reimbursement, there were discrepancies in the purchased quantity and the consumption quantity which was due to spillage and leakages. As per the terms of the contract with Vodafone, it is seen that the service provider (i.e the appellant) is responsible to undertake preventive action to avoid diesel spillage or leakage.

6.45 The assessee claims to have taken proper preventive measures. However, it was impossible to avoid leakage of diesel and such the cost of the same has to be borne by the appellant which is the penalty paid by the appellant.

6.46 I am of the considerate view that the appellant has produced sufficient explanation regarding the nature of contract and expenditure. It can be seen that such expenses are in the normal course of business and should be allowable under section 37 of the Act as per the claims made by the appellant. Hence, disallowance made by the learned AO is deleted.

6.47 Accordingly, ground 12 of the appellant is allowed.

Ground 13

6.48 Ground 13 relate to disallowance of expenses on account of night patrolling charges.

6.49 The assessee has submitted detailed ledger and vouchers for payment of night patrolling expenses. The appellant has claimed that night patrolling were required in the night to control burglary at different sites as most sites were located in the interior parts and even a small part of asset held by the assessee was a valuable asset and that it was very necessary to avoid theft for smooth functioning of the mobile towers.

6.50 The night patrolling expenses were done on four-wheeler vehicles. The payment includes payment made to night watchman, cost of diesel of the vehicles used for night patrolling, cost of the driver and Page 87 of 91 AAJCS6622G- WELKIN TELECOM INFRA PRIVATE LIMITED A.Y. 2013-14 ITBA/NFAC/S/250/2022-23/1050735877(1) other incidental charges.

6.51 I am of the considerate view that the assessee has been able to prove that the transactions were genuine and the limitations on producing all the vouchers due to the amount being meagre. Hence the addition made by the learned Assessing Officer is deleted.

6.52 Accordingly, ground 13 of the appellant is allowed

Ground 14,15.

6.53 Grounds 14 pertain to sum payable by the appellant as deducted from employees by way of contribution to PF and ESI. The appellant has paid the same before the due date of filing of Income Tax Return and claimed to be allowable expense.

6.54 The Assessing Officer has contended that the appellant should have paid such sum before due date mentioned under respective statutory act and not the Income Tax Act. The learned Assessing Officer relied on provisions of section 36(i)(va) which is effective from 1 April 2021.

6.55 It can be seen from the provisions of section 43B that the appellant is required to pay the dues before the due date of filing of return for the relevant assessment year. Relevant extract of S.43B has been reproduced here under

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such

sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

6.56 From above, it is evident that provision of section 43B clearly states that payment can be made till due date of filing of income tax return, which is complied by the appellant and the provisions quoted by learned AO are applicable from 1 April 2021 onwards.

6.57 Further, reliance has also been placed on the following judgements

1. Supreme Court of India in the case of Commr. Of Income Tax, Gauhati vs Vinay Cement Ltd

"In the present case we are concerned with the law as it stood prior to the amendment of Section 43-B. In the circumstances the assessee was entitled to claim the benefit in Section 43-B for that period particularly in view of the fact that he has contributed to provident fund before filing of the return."

1. Hon'ble High Court of Calcutta being the jurisdictional High Court in the matter of Commissioner of income Tax vs. Ws. Vijay Shree following the judgment of the Hon'ble Supreme Court of India in the matter of CIT vs. Alom Extrusion Ltd., has held that-

"After hearing Mr. Sinha, learned advocate, appearing on behalf of the appellant and after going through the decision of the Supreme Court in the case of commissioner of Income Tax vs. Atom Extrusion Ltd., we find that the Supreme Court in the aforesaid case has held that the amendment to the second proviso to the sec 43(B) of the Income Tax Act, as introduced by Finance Act, 2003, was curative in nature and is required to be applied retrospectively with effect from 1 April, 1988. Such being the position, the deletion of the amount paid by the Employees' Contribution beyond due date was deductible by invoking the aforesaid amended provisions of section 43(B) of the Act."

1. In the matter of Commissioner of Income Tax, Central II vs. M/s. R.E.I. Agro Ltd., reported in 120131 144 1TD (Kol) 141, the Hon'ble High Court of Calcutta has held that-

"The Contribution towards provident fund, even if deposited beyond the stipulated period, is allowable by virtue of the amendment "

6.58 In view of the above I am of the considerate view that the contention of learned Assessing Officer that the dues were not paid by the assessee within the time frame for claiming deduction under the Income Tax Act is incorrect. Therefore, the addition made by learned Assessing Officer is deleted.

6.59. Accordingly, Ground 14, 15 of the appellant is allowed."

9. On going through the finding of Ld. CIT(A) and submissions made from both the sides, we now move on to deal with each of the ground raised by the Revenue:

10. Ground nos. 1 to 3 of the revenue's appeal relate to deletion of addition for negative cash balance of Rs.1,22,38,392/- made by AO u/s. 69C of the Act. The said addition was made by Ld. AO based on the finding of the Special Auditors wherein it referred to negative cash balance at various point

of time. We notice that the assessee is used to issue self cheque and on the very same day debited in the cash book and credited the bank. However, on few occasions, the self cheques were encashed on the later date and the Special Auditor while examining the records has considered the cash receipt entry in the book on day when it was withdrawn from the bank. We find that the assessee is used to incur certain expenses on the multiple sites running in or around 3000 in number through self drawn cheque and for the purpose of making book entry considered that the day when the self cheque has been issued it has been encashed and the entries were made in the books. Though the practice is not correct and only when the cash is actually withdrawn then the entries should be made in cash book but the facts indicate that on the very same day when self cheques have been entered in the books, expenses have also been booked in cash. Genuineness of the expenses have not been doubted by the Ld. AO. Therefore, since the assessee has provided explanation for each of the instance of negative cash and the same is on account of timing difference between recording the expenses in books of account and by withdrawal of cash against self drawn cheque, there is actually no negative cash balance. The supporting cash vouchers duly signed by the parties along with the rectified cash book prepared by factoring such time difference stands submitted, based on which Ld. CIT(A) has rightly come to the conclusion that no addition for negative cash balance of Rs.1,28,38,392/- is called for u/s. 69C of the Act. We, therefore, dismiss ground nos. 1 to 3 raised by the revenue.

11. Ground nos. 4 and 5 raised by the revenue are towards deletion of disallowance of caretaker service of Rs.1,48,13,420/- u/s. 69C of the Act. The Special Auditor observed that the alleged expenditure has been paid to four parties but there is no supporting documents in the form of invoices, agreements with these parties to prove the genuineness of the expenditure. We note that the payments have been made to the parties through banking channel and deducting tax at sources thereon. The alleged transaction of

payment for getting the services are duly recorded in the books and, therefore, *prima facie* addition u/s. 69C of the Act is uncalled for because the same is attracted only if the transactions are not recorded in the books of account. We further note that the said expenditure is on account of comprehensive maintenance services of the assets located at different sites provided by these caretakers, which mainly include mobile towers, DG sets, air-conditioning units, power plants, fire alarm system etc. Ledger account of these parties along with supporting vouchers and the agreements along with their confirmation stood filed before the Ld. CIT(A). Under these given facts and circumstances, wherein the alleged transaction of expenditure for caretaker services is duly recorded in the books and the genuineness of the transaction is also proved with the supporting evidence including invoice, agreements etc. we fail to find any infirmity in the finding of the ld. CIT(A) in disallowing the addition of Rs.1,48,13,420/- made by the AO u/s. 69C of the Act.

12. In ground nos. 4 and 5 apart from challenging the disallowance on caretaker services expenditure of Rs.1,48,13,420/-, revenue has also challenged the deletion of disallowance of cash expenses of Rs.82,38,127/- incurred towards maintenance and services. We note that certain vouchers which could not be produced before the Special Auditor for lack of proper opportunity were subsequently filed before Ld. CIT(A) on which remand report was also called for. We note that the Ld. AO has no where doubted the source of expenses incurred and doubts have already been made regarding genuineness of the expenses, therefore, *prima facie* 69C of the Act has no role to play. Further, the bank statement reflects sufficient funds for making the payment to the parties along with the documents including invoices and agreements. It is also noticed that Ld. AO has made disallowance of Rs.9,91,300/- under the head 'Night Patrolling Charges' and Rs.2,87,415/- under the head 'site expenses', however, in ground No. 6 and 13, Ld. AO has also disallowed the entire expenses claimed in the accounts

under the head ‘Night patrolling Chares” and ‘site expenses’ which thus tantamount to double addition of various expenses. Considering the facts and circumstances of the case, we find that the alleged disallowance of expenditure of Rs.82,38,127/- is merely based on surmises and conjectures and Ld. CIT(A) after having duly considered the documents filed by the assessee has rightly deleted the addition of Rs.82,38,127/-. No infirmity is called for in the finding of Ld. CIT(A). Ground nos. 4 and 5 of the revenue’s appeal are dismissed.

13. Ground no. 6 raised by the revenue is against the deletion of disallowance of site expenses of Rs.1,06,12,994/- made by the Ld. AO invoking section 69C of the Act.

14. Ld. AO made the disallowance of the site expenses on the ground that the assessee failed to file explanation along with the documentary evidence, attendance register, salary and break up of over time etc. We observe that the assessee is providing support services to various telecom operators wherein scope of services to various telecom operators comprises identification and acquisition of site, municipal clearance, soil testing, civil foundation, tower erection DG installation etc. These activities are carried out at more than 3000 sites during the year. To undertake the level of work of this magnitude assessee appoints many trainees to whom stipend is paid. Copies of appointment letter and the ledger extract depicting the payments are placed before us. This is part of the regular policy of the Company to appoint trainee before actually taking them on the regular pay roll. After reviewing their services for six months to one year, if found suitable then they are transferred to the pay roll of the company. To explain the genuineness of the said expenditure sufficient details have been filed. This issue in assessee’s own case for AY 2014-15 also came before this Tribunal and vide its order dated 18.04.2022 in ITA No. 12/Kol/2021 has dealt this issue and deleted the disallowance of site expenses based on the facts placed on record observing as under:

“14. Having heard both the parties and after perusal of the record as noted by us, we find that the admitted facts of the case are that, the assessee is giving support service to various telecommunication operators and was functioning at more than 3300 work sites. In order to fulfill its contractual obligations with the various telecom operators, it largely depended on huge manpower. For that it had recruited number of raw recruits who were trained as trainees and sent to far flung places scattered all round the country. It was brought to our notice that the employees were mainly trainees for whom meager stipends were given till successful completion of their probation period. And since its sites were situated in the far flung areas of the West Bengal and there were no banking facilities and since the amounts/stipend were meager the disbursal of the same were made mainly through cash. Although the AO noted that ‘site expenses’ were to the tune of Rs.66,15,994/-, but it is noted that due to inadvertent error on the part of the accountant, certain items of site expenses to the tune of Rs.28,80,000/- & Rs. 8,00,000/- were erroneously transferred to the ledgers of ‘transportation expenses’ and ‘office expenses’ respectively. We thus note that the actual site expenses was to the tune of Rs. 1,02,95,994/- (Rs.66,15,994 + Rs.28,80,000/- + Rs.8,00,000/-). It is noted that the assessee had filed vouchers/ledgers for discharging the burden to prove the veracity of the claim (refer pages 33-83 of paper book). The details of sample appointment letters (refer pages 84-97 of paper book) and the rationale for payment of stipends in cash has already been discussed in earlier paragraphs. Even the Ld. CIT(A) has acknowledged that assessee operates in more than 3000 sites scattered around the state and that the assessee had produced the documents called for, which contained in the document number, document date, cheque number, cheque date and narration. In the light of these facts, we are of the view that the assessee has discharged the initial onus to prove the veracity of the claim of expenditure. Therefore, according to us, the assessee has discharged its burden in respect of the claim of expenditure made by it. Moreover, no defects could be pointed out by the AO/Ld. CIT(A) in respect of the audited books of the assessee in as much as the books of accounts has not been rejected. Hence, the ad-hoc disallowance of expenditure cannot be countenanced.

15. It is noted that the lower authorities were primarily influenced by the special audit carried out in the earlier assessment year and therefore nursed a suspicion in the mind while adjudicating this claim. It should be borne in mind that the maxim “falsus in uno falsus in omnibus” meaning false in one thing is false in everything is not applicable in the Indian context as held by the Hon’ble Supreme Court in the case of Smt. Shakila Abdul Gofarkhan Vs. Vasant Raghunath Dhoble 2003 AIR SCN 5343 and Israr Vs. State of UP 2004 AIR SCW 6916. Even if for argument sake, certain flaws were found during the assessee’s special audit conducted for earlier year (i.e. AY 2013-14), the said Special Audit Report cannot be the sole ground for disbelieving the expenditure claimed in relevant year, without first discarding the evidence brought on record by the assessee to substantiate the claim and that too with cogent reasons. This, according to

us, has not been done by the lower authorities. In that view of the matter, the impugned action of both the AO and Ld. CIT(A) in disbelieving the genuineness of expenses by relying on earlier year's special audit is held to be untenable on facts and in law.

16. Moreover, according to us, no ad-hoc disallowance can be made without following the due process of law as contemplated u/s. 145 and 144 of the Act. Before making the ad-hoc disallowance of 90% of the site expenses, no defects in the books of accounts were brought on record by the Ld. CIT(A) nor books of accounts were rejected by him. In the present case, the Ld. CIT(A) himself accepted the fact that the assessee is running more than 3000 telecom sites where site expenses are to be incurred. These sites are located at remote areas. He also admitted that the assessee had submitted the document number, document date, voucher amount, cheque date, cheque number and narration, still an ad-hoc disallowance of 90% was made by him without any cogent reasoning. Even though the assessee had filed all the documents to substantiate its claim, the Ld. CIT(A) allowed only 10% of the claim, which cannot be accepted for the simple reason that if the Ld. CIT(A) was of the opinion that the assessee failed to produce material evidence to prove the expenditure then, he was at liberty to pin point the specific item of expenditure which he finds to be non-genuine for cogent reasons. On these facts, the action of the Ld. CIT(A) in disallowing 90% of the expenses is per se held to be arbitrary and whimsical in nature and against the 'Rule of Law'. The reliance placed by the Ld. AR on the judgment of the Hon'ble Mumbai ITAT in the case of TUV India Pvt. Ltd. Vs DCIT (ITA No. 6628/Mum12017) reported in [2019] 110 taxmann.com 175 (Mumbai) in this regard, is found to be apt, wherein it was held that,

"The assessee also submitted break up of these expenses before Ld. CIT(A) during appellate proceedings anti before the AO during remand proceedings which are placed in paper book. The Remand Reports were called for by Ld. CIT(A) from the AO with respect to additional evidences filed before it keeping in view Rule 46A of the 1962 Rules. No defects in the books of accounts were brought on record by the authorities below nor books of accounts were rejected by the authorities below. If the authorities were not satisfied with aforesaid details, then they ought to have called for further details. In the preceding assessment year i.e. AY 2010-11 and in immediately succeeding assessment year i.e. AY 2012-13, no ad-hoc disallowances of expenses were made by the AO in an assessment framed u/s. 143(3) of the Act. The assessment orders for AY 2010-11 and AY 2012-13 are placed in file. The assessee has discharged its onus by bringing on record complete details of the expenses incurred by it albeit the same was brought on record during the course of appellate proceedings before Ld. CIT(A)/remand proceedings conducted by the AO under directions of Ld. CIT(A). The powers of Ld. CIT(A) are co-terminus with powers of the AO. No enquiries were conducted by the AO/Ld. CIT(A) even during appellate/remand proceedings. The books of accounts were not rejected by authorities below nor any defect is pointed out by the AO/Ld.

*CIT(A) in the books of accounts maintained by the assessee. There is no allegation by Revenue that the assessee claimed any bogus expenses or any attempt is made to defraud Revenue. Under these circumstances keeping in view factual matrix of the case, we are of the considered view that aforesaid ad-hoc disallowance of expenses under various heads of expenses to the tune of 10% of the total expenses incurred by the assessee under these heads of expenses is not warranted and we order deletion of the said ad-hoc disallowance of expenses. The assessee succeeds on ground number 5 and 6 raised by it in memo of appeal filed with tribunal. We order accordingly. "*

17. We also rely on the decision of this Tribunal in the case of *ACIT vs. Shyam Sunder Agarwal (ITA No.1182/KOL/2013)* dated 27-05-2016 wherein it was held that-

*"No enquiry whatsoever was made by the Assessing Officer with the concerned truck owners to find out the genuineness of the hire charges claimed to be paid by the assessee. Even no specific or material defects were pointed out by the Assessing Officer in the vouchers maintained by the assessee in support of his claim for truck hire charges except that the said vouchers were self- made vouchers and the truck hire charges were paid by the assessee in cash. Keeping in view the nature of the business of the assessee, there was nothing unusual in making the payment of truck hire charges in cash through self-made vouchers so as to doubt the genuineness of the expenditure incurred by the assessee on truck hire charges. Moreover, as rightly held by the Ld. CIT(Appeals), the ad hoc disallowance of Rs.30,00,000/- made by the Assessing Officer was without any basis. In the case of *Ranjit Singh Prem Singh Ahuja -vs.- DCIT (ITA No. 961/PN/2014 dated 24.06.2015)*, a similar issue had come up for consideration before the Pune Bench of this Tribunal and the disallowance of 2% of transport expenses made by the Assessing Officer by raising trivial objection was held to be not sustainable by the Tribunal on the ground that no material discrepancy whatsoever had been pointed out by the Assessing Officer in the books of account and other record maintained by the assessee in support of its claim for transport expenses. Keeping in view the decision of the Coordinate Bench of this Tribunal in the case of *Ranjit Singh Prem Singh Ahuja (supra)* and having regard to all the facts of the case, we are of the view that the ad hoc disallowance of Rs.30,00,000/- made by the Assessing Officer out of truck hire charges was not sustainable and the ld. CIT(Appeals) is fully justified in deleting the same. In that view of the matter, we uphold the impugned order of the Ld. CIT(Appeals) giving relief to the assessee on this issue and dismiss this appeal filed by the Revenue."*

18. As far as the decisions relied upon by the Ld. CIT(A) in his appellate order, we find that they are not applicable to the facts of the instant case. In the cases of *PCIT Vs RimjhimIspat Ltd. [2016] 382 ITR 152 (All) & MaltiGupta vs CIT(2019) 415 ITR 168 (P&H HC)*, *Sandeep Marwah vs ACIT (2019) 260 Taxman 231*, the assessee were unable to produce any bills or vouchers to substantiate their claim of expenses and therefore ad-hoc

*disallowance out of the total expenditure was made. In the present case however, we note that the bills and vouchers were duly produced before the Ld. CIT(A) and the same was also sent to the AO for his remand report. The Ld. CIT(A) also observes that "the assessee has also submitted the document number, document date, voucher amount, cheque date, cheque number and narration" Hence, the judgments cited by the Ld. CIT(A) are found to be factually distinguishable and hence of no relevance.*

*19. Moreover, the AO erred in disallowing the expenses by invoking u/s. 69C of the Act because, in this case, not only the expenses were recorded in the books of accounts but the assessee was also able to prove the source of expenditure claimed. The assessee has demonstrated that the source of expenses was the revenues earned during the year, which is evident from Pages 12 & 13 of the paper book. Hence, the reliance placed by the AO on the decisions of the Hon'ble Calcutta High Court in the case of CIT vs Bhagwati Developers P Ltd (261 ITR 658) & L.M. Thapar vs. CIT (149 ITR 383) is found to be misplaced in as much as in both these judgments the expenses found to have been incurred by the assessee were not recorded in the books of accounts and therefore its source remained unexplained. This is clearly not the factual position in the present case.*

*20. In the light of the aforesaid discussion, and relying on the case laws (supra) and the peculiar facts and circumstances of the case, the disallowance of site expenses is hereby deleted. Ground No. 1 of the appeal stands allowed."*

15. Respectfully following the view taken by the Tribunal in assessee's own case and also considering the facts and circumstances for the year under appeal, we fail to find any infirmity in the finding of the ld. CIT(A) as the assessee has specifically demonstrated the genuineness of such expenses which have been incurred towards stipend paid to the trainees in the regular course of business. Thus, ground no. 6 raised by the revenue challenging the deletion of disallowance of site expenses of Rs.1,06,12,994/- is dismissed.

16. Ground No. 7 raised by the revenue is against the disallowance made u/s. 40A(3) of the Act for the cash payment exceeding Rs. 20,000/-. Before us, it has been claimed that the assessee had not made any payment exceeding Rs. 20,000/- to a single person on a single day. Our attention was also drawn to the entry of Rs.2,35,37,421/- which is actually a journal entry and not cash payment entry. Even the name of the party to whom payment

is made is not mentioned in this voucher. Since the entry of Rs.23,53,742/- is part of a journal entry and not a cash payment entry, the Ld. AO erred in making disallowance u/s. 40A(3) of the Act. Finding of Ld. CIT(A) needs no interference, therefore, ground no. 7 raised by the revenue is dismissed.

17. Ground no. 8 is against the deletion of disallowance of interest on late payment of statutory liability of Rs.16,88,075/-. The said addition is towards disallowance of interest paid for delay in payment of statutory liabilities towards service tax, professional tax and TDS. Ld. CIT(A) has deleted the said disallowance taking support of the decision of this Tribunal in assessee's own case for AY 2014-15 referred (supra). We, however, note that the Tribunal in case of Premier Irrigation Adritec (P) Ltd. Vs. ACIT, ITA No. 387/Kol/2021 dated 20.01.2023 had held that interest on delayed payment of TDS is not an allowable expenditure u/s. 37(1) of the Act. We, therefore, sustain the disallowance to the extent of interest paid on delayed payment of TDS and affirm the finding of Ld. CIT(A) deleting the remaining amount of disallowance for interest paid on delayed payment of service tax and professional tax. Ground no. 8 raised by the revenue is partly allowed.

18. Ground no. 9 raised by the revenue is against the disallowance of revenue expenditure of Rs.2,24,269/- incurred for the purpose of replacing parts of commercial vehicle. Ld. AO treated the said expenditure as capital and disallowed the claim of expenditure made by the assessee. We, however, notice that the tyres and iron wheel rims were purchased for the purpose of replacing the parts of commercial vehicles for smooth and continuous running and such parts do not provide any enduring benefit spreading over to more than years. Considering the revenue nature of alleged expenditure, we are in conformity with the view of the Ld. CIT(A) that the assessee has rightly claimed it as revenue expenditure at Rs.2,24,269/- u/s. 37(1) of the Act. Ground No. 9 raised by the revenue is dismissed.

19. Ground no. 10 of the revenue's appeal is against the deletion of disallowance u/s. 37 of Rs.27,18,476/- on account of loss on Vodafone fuel.

We observe that in connection to the service agreement with Vodafone Essar Space Ltd., the assessee had to purchase diesel from different petrol pumps for fuelling in the diesel Generator sets located at sites in different locations. As per the agreement, Vodafone Essar Space Ltd. will reimburse only that portion of the diesel expenses which is actually consumed in the DG sets and the loss incurred due to spilling or leakage will have to be borne by the assessee. The assessee claimed that portion of the expenditure which are towards leakage of diesel and also loss on account of evaporation of diesel are allowable expenditure u/s. 37(1) of the Act. But the said expenditure was shown by assessee as penalty imposed by Vodafone Essar Space Ltd. Ld. AO invoked Explanation (1) to sec. 37 of the Act disallowing the expenditure being penal in nature. We, however, fail to find any merit in the finding of the AO because the said expenditure is not a penalty in the nature of any offence under any law. Such expenses were incurred in the normal course of business and are clearly allowable u/s. 37(1) of the Act. We thus, fail to find any infirmity in the order of the Ld. CIT(A), therefore, the ground no. 10 of the appeal of the revenue stands dismissed.

20. Ground no. 11 raised by the revenue is against the disallowance of night patrolling charges of Rs.34,63,042/-. Ld. AO made such disallowance only on the ground that they were based on self debit voucher and that the genuineness of the expenditure is not proved. We note that the assessee has been incurring the night patrolling charges expenses for self vigilance activities to control burglary and thefts. Night watchmen were appointed to carry out the night patrolling work as the sites are located far away from the city and the persons performing these duties are not very educated. The assessee has to prepare the debit vouchers and pay the agreed sum. Considering the nature and magnitude of the business, we fail to find any reason to doubt the genuineness of the expenditure incurred by the assessee. We thus, fail to find any infirmity in the order of the Ld. CIT(A) treating the alleged expenditure as normal business and genuine

expenditure. Thus, ground no. 11 of the appeal of the revenue stands dismissed.

21. Ground no. 12 is raised by the revenue against the addition made u/s. 36(1)(va) of the Act for delay in deposit of employees' contribution to PF & ESI at Rs.10,66,742/-. Before us, Ld. Counsel for the assessee was fair enough in accepting that the revenue deserves to succeed in this ground in the light of the judgment of Hon'ble Apex Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)*. We, therefore, respectfully following the ratio laid down by the Hon'ble Apex Court in the case of *Chekmate Services Pvt. Ltd. (supra)* confirm the disallowance made by the AO of Rs.10,66,742/- u/s. 36(1)(va) of the Act. Ground No. 12 of the appeal of revenue is allowed.

22. Ground No. 13 raised by the revenue is against the disallowance of rent of Rs.5,27,500/- paid to Maa Tara Telecom at Rs.1,67,500/- and to Shroff Chemicals Pvt. Ltd. at Rs.3,60,000/-. Ld. AO made the disallowance because notices to these parties remained unserved. During the proceeding before the first appellate authority, details have been filed which indicates that payment to Maatara Telecom was against renting of laptops. Copies of bills are placed at paper book page 425 and rent to Shroff Chemical Pvt. Ltd. was against renting of godown used for the purpose of storing parts of mobile towers, DG sets etc. Copy of bill raised by the godown owner is available on record. We find that the payment have been made after duly deducting tax at source. Genuineness of the expenditure is also proved. We thus, fail to find any infirmity in the order of the Ld. CIT(A). Therefore, ground no. 13 of the appeal of the revenue stands dismissed.

23. Ground no. 14 is raised against the disallowance on account of DG maintenance expenses at Rs.80,749/-. The assessee has debited a total sum of Rs.97,32,835/- on account of DG maintenance charges. Ld. AO has disallowed only Rs.80,749/- for want of proper bills because the payments were found to be given to individuals in lieu of kachha bills by some local

vendors. We on going through the details filed by the assessee as well as the finding of the ld. CIT(A) find that the Ld. AO ought to have considered the fact that assessee is having more than 3000 DG sets working at different locations. It is practically not possible to find the registered vendors at each place. Therefore, under exceptional circumstances employees of the company had to go to the local market to procure the material so as to run the DG sets. Considering the genuineness of the expenditure, we fail to find any infirmity in the order of the Ld. CIT(A), therefore, ground no. 14 of revenue's appeal is dismissed.

24. Ground no. 15 is general in nature needs no adjudication.

25. In the result, appeal of the revenue is partly allowed.

Order is pronounced in the open court on 10th October, 2024.

Sd/-

(Rajpal Yadav)  
Vice President

Sd/-

(Dr. Manish Borad)  
Accountant Member

Dated : 10.10.2024

*J.D. Sr. PS.*

*Copy of the order forwarded to:*

1. **Appellant – DCIT, Circle-11(1), Kolkata,**
2. **Respondent – Welkin Telecom Infra Pvt. Ltd.**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata